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July 1, 1996

Michelle Farquhar, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 5002
Washington, D.C. 20054

Via Messenger

DOCKET FILE COPY ORIGINAL

RE: Mobile IVDS Service, WT Docket No. 95-47
Request for Clarification of Report and Order

Dear Ms. Farquhar:

This letter is being written on behalf of ITV, Inc. ("ITV") and IVDS Affiliates, LC ("IALC") to request clarification of one portion in the Commission's recent Report and Order in the Mobile IVDS Service proceeding.^{1/} As a preliminary matter, ITV and IALC applaud the Commission's Mobile IVDS decision. In general, the Commission correctly evaluated the record and reached a balanced decision.

However, ITV and IALC seek clarification that the Commission's prohibition on interconnection of IVDS systems with the Public Switched Network ("PSN") (Mobile IVDS, supra, ¶29) will be applied consistently with the Commission's definition of "interconnection with the PSN" for the purposes of categorizing wireless mobile licensees as either Commercial Mobile Radio Service ("CMRS") or Private Mobile Radio Service ("PMRS") providers.^{2/}

^{1/} Mobile IVDS Service, 11 FCC Rcd _____ (FCC 96-224, released May 30, 1996) (WT Docket No. 95-47) (Report and Order) ("Mobile IVDS"). Because of the nature of the clarification, the Bureau's staff has advised that ITV and IALC seek clarification informally, rather than filing a Petition for Reconsideration of the Mobile IVDS decision. However, recognizing that others may file Petitions and seeking to give the Commission maximum flexibility in responding to their request, ITV and IALC are filing the original and four copies of this letter with the Secretary's Office in compliance with Section 1.106 of the Commission's Rules.

^{2/} See Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411, 1434-36 (1994) (GN Docket No. 93-252) (Second Report and Order) ("Mobile Services").

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Specifically, any use of the PSN permitted for a PMRS licensee's internal control purposes should also be permitted for an IVDS licensee's internal control purposes.

Description of ITV and IALC. ITV and IALC are commonly owned. ITV is an IVDS licensee for the San Francisco MSA. Accordingly, ITV has experience in assessing the technical and economic realities of the IVDS business. As a result of that assessment, ITV formed IALC to develop a product line of IVDS equipment for ITV's use and for the use of other IVDS licensees. That equipment, which is now type-accepted and operational for an in-market field trial, can use the IVDS spectrum to distribute business and commercial data to subscribers.

ITV and IALC are active participants in numerous IVDS proceedings before the Commission, and filed Comments in this proceeding. Also, ITV was the moving party in requesting the Commission's recent clarification of the IVDS Channel-13 notification requirements.

The Area in Which Clarification Is Required. As amended by the Mobile IVDS decision, Section 95.805(c) of the Commission's Rules prohibits any mobile RTU in an IVDS system from being "interconnected with the public switched network or any commercial mobile radio service." This prohibition implements the policies articulated in Paragraph 29 of the Mobile IVDS decision, in which the Commission reasoned as follows:

[T]he purpose of IVDS is to provide information, products, or services to individual subscribers and to accept interactive responses. We do not believe, nor have the commenters demonstrated, that interconnection with the PSN is critical to this type of operation. In fact, we are concerned that allowing interconnection with the PSN at this time could impede IVDS from reaching its full unique potential. We recognize that interconnection with the PSN, coupled with mobile offerings, might convert IVDS generally from a private service to a commercial service.... [W]e decline to permit such interconnection [of IVDS to the PSN].^{3/}

However, the Mobile IVDS decision did not define the phrase "interconnection with the PSN." For that reason, ITV and IALC hereby request clarification of the Commission's prohibition.

^{3/} Mobile IVDS, supra, 11 FCC Rcd at ____ (¶29) (footnote omitted).

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The Requested Clarification of ITV and IALC. Section 332(d)(2) of the Communications Act, as amended by the 1993 Budget Act, required the Commission to define the term "interconnection with the PSN" in the context of categorizing Part 90 licensees as either CMRS or PMRS. In Mobile Services, supra, the Commission adopted the following definition:

Congress intended that mobile services should be classified as commercial services if they make interconnected service broadly available through their use of the public switched network. The purpose underlying the congressional approach, we conclude, is to ensure that a mobile service that gives its customers the capability to communicate to or receive communication from other users of the public switched network should be treated as a common carriage offering (if the other elements of the definition of commercial mobile radio service are also present...).

Therefore, we believe it is reasonable to conclude that an interconnected service is any mobile service that is interconnected with the public switched network, or service for which a request for interconnection is pending, that allows subscribers to send or receive messages to or from anywhere on the public switched network. * * * We agree, however, with those commenters who argue that our interpretation of interconnected service should not include interconnection with the public switched network for a licensee's internal control purposes.^{4/}

Thus, the Mobile Services decision (as quoted above) defines in great detail the term "interconnection with the PSN" which the Mobile IVDS decision left undefined. This omission clearly implies that the Commission intended to apply the Mobile Services definition of interconnection to IVDS. ITV and IALC have therefore concluded that the Commission's Mobile IVDS decision does not prohibit -- and was not intended to prohibit -- IVDS licensees from interconnecting with the PSN for their internal control purposes.

^{4/} Mobile Services, supra, 9 FCC Rcd at 1434-1435 (footnotes omitted, emphasis added). This decision also defined the term PSN for the purposes of CMRS/PMRS classification. See id. at 1436-37. ITV and IALC would further request that this definition be applied to IVDS.

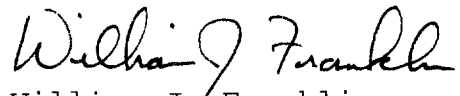
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IALC is now considering an IVDS system architecture which would give ITV and other IVDS licensees the flexibility to use private switched lines and/or CMRS service offerings to carry "return-path" IVDS signals back from a subscriber's RTU to the IVDS licensee's CTS or its central control computers. Additionally, ITV and other IVDS licensees might want to use inter-exchange carriers to link up their respective IVDS systems. These proposed uses of the PSN or CMRS services would be invisible to the IVDS subscriber, and would not be activated by the subscriber's dialing into the PSN. Accordingly, ITV and IALC have tentatively concluded that their proposed use of the PSN would be permitted as "interconnection with the [PSN] for ... internal control purposes."

However, ITV and IALC have an immediate need for this point to be clarified. Investment decisions cannot rationally be based on a licensee's interpretation of matters left unstated in Commission decisions.

In order to achieve regulatory symmetry, ITV and IALC respectfully suggest that the Commission or the Wireless Telecommunications Bureau clarify that its prohibition against interconnection of IVDS systems with the PSN incorporates the Commission's definition of "interconnection with the PSN" adopted in the Mobile Services decision and quoted above. An immediate clarification of this matter would assist ITV and IALC in developing and implementing their IVDS equipment and systems.

Respectfully submitted,



William J. Franklin
Attorney for ITV, Inc. and
IVDS Affiliates, LC

WJF/mtf

cc: Robert H. McNamara, Chief
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